

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ISABEL BERMUDEZ,

Plaintiff,

-against-

MEMORIAL HOSPITAL FOR CANCER
AND ALLIED DISEASES,

Defendant.
-----X

Case No.: 08 CV 01977

**ANSWER TO
COMPLAINT**

Judge assigned:
Leisure, J.

Defendant, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, by its attorneys KAUFMAN BORGEESE & RYAN LLP, as and for its Answer to plaintiff's Complaint, states upon information and belief as follows:

1. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph designated "1" of plaintiff's Complaint.

2. Answering defendant denies the truth of the allegations contained in the paragraph designated "2" of the plaintiff's Complaint, except states that defendant was, and is, a domestic not-for-profit corporation incorporated in the State of New York and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

3. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph designated "3" of the plaintiff's Complaint, except states that MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES was, and is, a hospital located at 1275 York Avenue, New York, New York and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

4. Answering defendant denies the truth of the allegations contained in the paragraph designated “4” of the plaintiff’s Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

5. Answering defendant denies the truth of the allegations contained in the paragraph designated “5” of the plaintiff’s Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

6. Answering defendant denies the truth of the allegations contained in the paragraph designated “6” of the plaintiff’s Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

7. Answering defendant denies the truth of the allegations contained in the paragraph designated “7” of the plaintiff’s Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

8. Answering defendant denies the truth of the allegations contained in the paragraph designated “8” of the plaintiff’s Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO PLAINTIFF’S CLAIM FOR RELIEF
AGAINST THE DEFENDANT

9. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph designated “9” of plaintiff’s Complaint.

10. Answering defendant denies the truth of the allegations contained in the paragraph designated “10” of the plaintiff’s Complaint.

11. Answering defendant denies the truth of the allegations contained in the paragraph designated "11" of the plaintiff's Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

12. Answering defendant denies the truth of the allegations contained in the paragraph designated "12" of the plaintiff's Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

13. Answering defendant denies the truth of the allegations contained in the paragraph designated "13" of the plaintiff's Complaint .

[SECOND] 13. Answering defendant denies the truth of the allegations contained in the paragraph designated [second] "13" of the plaintiff's Complaint.

14. Answering defendant denies the truth of the allegations contained in the paragraph designated "14" of the plaintiff's Complaint and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Upon trial, it may appear that some or all of the damages claimed by plaintiff herein were brought about or contributed to by reason of plaintiff's own acts, actions or negligence; and if so, plaintiff's damages, if any must be diminished accordingly.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

All risks and danger of loss or damages connected with a situation alleged in the Complaint were at the time and place mentioned obvious and apparent and were known by the plaintiff and voluntarily assumed by the plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom answering defendant neither had nor exercised control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The liability of this answering defendant is limited by the provisions of Article 16 of the Civil Practice Law and Rules (hereinafter "CPLR").

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, plaintiff failed to mitigate her damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Any verdict, judgment or decision that might be obtained by plaintiff against this answering defendant shall be reduced by the amount of any collateral source payments received by plaintiff pursuant to CPLR §4545(c) as determined by the Court.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not in privity of contract with answering defendant.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Upon information and belief, all risks and danger of loss or damages connected with the situation alleged in the complaint were de minimus, trivial and do not qualify as dangerous condition(s).

WHEREFORE, defendant, **MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES,** demands Judgment dismissing the Complaint herein, together with the costs and disbursements of this action and for such other, further and different relief as this Court deems just and proper.

Dated: Valhalla, New York
April 1, 2008

Respectfully submitted,



KAUFMAN BORGEESE & RYAN LLP

By: Stephanie B. Gitnik, Esq. (SG2588)

Michael P. Mezzacappa (MM 0757)

Attorneys for Defendant

**MEMORIAL HOSPITAL FOR CANCER
AND ALLIED DISEASES**

200 Summit Lake Drive, First Floor

Valhalla, New York 10595

(914) 741-6100

Our File No.: 716.397

TO: Eric Dinnocenzo (ED3430)
TRIEF & OLK
Attorneys for Plaintiff
150 East 58th Street, 34th Floor
New York, New York 10155
212-486-6060


CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer to Complaint upon following counsel, by placing same in the United States Mail, on this 1st day of April, 2008 and by filing the same electronically with the Court's ECF System:

Eric Dinnocenzo (ED3430)
TRIEF & OLK
Attorneys for Plaintiff
150 East 58th Street, 34th Floor
New York, New York 10155
212-486-6060

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: Valhalla, New York
April 1, 2008


Stephanie B. Gitnik, Esq. (SG2588)